THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.

Hearing: July 1, 2003

15 APR 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Globe Food Equipment Co.

Serial No. 76231175

Request for Reconsideration

Thomas W. Flynn for Globe Food Equipment Co.

Jill C. Alt, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Simms, Hanak and Holtzman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Globe Food Equipment Co. (applicant) filed a timely Request for Reconsideration of this Board's decision of December 1, 2003 in which the Board affirmed the refusal to register applicant's mark CHEFMATE in typed drawing form for "power operated, commercial, food service machines, namely, meat slicers, food mixers and food processors."

Applicant argues at page 3 of its Request for Reconsideration that "the Board says that confusion will occur, while those directly concerned say it won't." When applicant uses the word "those," it refers to itself and the owner of the two cited registrations which formed the basis for the refusal to register pursuant to Section 2(d) of the Trademark Act.

Applicant has made of record no evidence whatsoever that the owner of the two cited registrations is currently of the view that the use of applicant's mark CHEFMATE for applicant's goods and the use of the identical mark CHEFMATE for registrant's goods as set forth in Registration No. 1,168,433 or Registration No. 2,156,071 would not result in a likelihood of confusion. In other words, applicant never submitted from registrant any written document (letter, declaration, affidavit or otherwise) stating that registrant was of the view that applicant's use of the mark CHEFMATE for its goods and registrant's use of the mark CHEFMATE for its goods would not result in a likelihood of confusion. Whatever statements registrant may have made in 1998 or earlier in order to obtain its second registration of CHEFMATE (Registration No.2,156,071), are of extremely minimal value in determining whether there currently exists a likelihood

of confusion between the use by applicant and registrant of the identical mark CHEFMATE for their respective goods.

In short, if applicant were truly of the belief that registrant now believes that there is no likelihood of confusion resulting from the use by both parties of the identical mark CHEFMATE for their respective goods, then applicant should have obtained from registrant a consent to, at a minimum, register CHEFMATE for "power operated, commercial, food service machines, namely, meat slicers, food mixers and food processors."

One final comment is in order. At page 8 of our decision dated December 1, 2003, we specifically stated that "we are not unsympathetic to applicant's plight." However, we explained that regardless of the wisdom of one Examining Attorney in allowing applicant to register CHEFMATE for commercial meat slicers despite the existence of registrant's first registration (Registration No. 1,168,433) of the identical mark for pots and pans, and the wisdom of a second Examining Attorney in allowing registrant to obtain its second registration of CHEFMATE for household slicers despite applicant's then existing (now expired) Registration No. 1,814,342 of CHEFMATE for commercial meat slicers, that this Board was simply not bound by the actions of these two Examining Attorneys. We

noted that it is well settled as a matter of law that "the PTO's allowance of such prior registrations does not bind this Board or this Court." In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ 1564, 1566 (Fed. Cir. 2001).

Decision: The Request for Reconsideration is denied.